

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORNELL HOLDEN and MIGUEL)
MEJIA on behalf of)
themselves and all others)
similarly situated,)

Plaintiffs,)

vs.)

No.)

1:17 Civ. 02192)

THE PORT AUTHORITY OF NEW)
YORK AND NEW JERSEY, et)
al.,)

Defendants.)

-----)

October 5, 2018

10:18 a.m.

Deposition of JOHN TONE, held at the
offices of Winston & Strawn LLP, 200 Park
Avenue, New York, New York, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 WINSTON & STRAWN LLP</p> <p>5 Attorneys for Plaintiffs</p> <p>6 1700 K Street, N.W.</p> <p>7 Washington, D.C. 20006-3817</p> <p>8 BY: DANIEL R. McNEELY, ESQ.</p> <p>9 dmcneely@winston.com</p> <p>10 - and -</p> <p>11 WINSTON & STRAWN LLP</p> <p>12 200 Park Avenue</p> <p>13 New York, New York 10166-4193</p> <p>14 BY: CESIE C. ALVAREZ, ESQ.</p> <p>15 calvarez@winston.com</p> <p>16 - and -</p> <p>17 - AND -</p> <p>18 THE LEGAL AID SOCIETY</p> <p>19 199 Water Street</p> <p>20 New York, New York 10038</p> <p>21 BY: CYNTHIA CONTI-COOK, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 S T I P U L A T I O N S</p> <p>3 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>4 among counsel for the respective parties hereto,</p> <p>5 that the filing, sealing, and certification of the</p> <p>6 within deposition shall be and the same are hereby</p> <p>7 waived;</p> <p>8 IT IS FURTHER STIPULATED AND AGREED that all</p> <p>9 objections, except as to form of the question,</p> <p>10 shall be reserved to the time of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>12 within deposition may be signed before any Notary</p> <p>13 Public with the same force and effect as if signed</p> <p>14 and sworn to before the Court.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S (continued):</p> <p>3</p> <p>4 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY</p> <p>5 Attorneys for Defendants</p> <p>6 150 Greenwich Street, 24th Floor</p> <p>7 New York, New York 10006</p> <p>8 BY: THOMAS R. BROPHY, ESQ.</p> <p>9</p> <p>10 ALSO PRESENT:</p> <p>11 BENJAMIN RUTKIN-BECKER (Legal Aid Society)</p> <p>12 DEVERELL WRITE, Videographer</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 THE VIDEOGRAPHER: We're going on the</p> <p>3 record at 10:17 a.m. on October 5th, 2018.</p> <p>4 Please note that the microphones are</p> <p>5 sensitive and may pick up whispering and</p> <p>6 private conversations.</p> <p>7 Please place all cell phones away from</p> <p>8 the microphones as they can interfere with the</p> <p>9 deposition audio.</p> <p>10 Audio and video recording will continue</p> <p>11 to take place unless all parties agree to go</p> <p>12 off the record.</p> <p>13 This is Media Unit 1 of the video-</p> <p>14 recorded deposition of John Tone taken by</p> <p>15 counsel for the plaintiff in the matter of</p> <p>16 Cornell Holden, et al., versus The Port</p> <p>17 Authority of New York and New Jersey, et al.</p> <p>18 This case is filed in the U.S. District Court</p> <p>19 for the Southern District of New York. We are</p> <p>20 here at the offices of Winston & Strawn,</p> <p>21 located at 200 Park Avenue, New York, New</p> <p>22 York.</p> <p>23 My is Deverell Write, representing</p> <p>24 Veritext Legal Solutions. The court reporter</p> <p>25 is Laurie Collins, from Veritext Legal</p>

<p style="text-align: right;">Page 18</p> <p>1 Tone</p> <p>2 Then you graduated in what of 2014?</p> <p>3 A. January of 2014.</p> <p>4 Q. Okay. All right. Thank you.</p> <p>5 While you were at the academy, were you</p> <p>6 trained on how to conduct plainclothes policing in</p> <p>7 the police academy?</p> <p>8 A. No.</p> <p>9 Q. When you graduated from the police</p> <p>10 academy, what was your first position at The PAPD?</p> <p>11 A. Police officer.</p> <p>12 Q. Is that still your position?</p> <p>13 A. Yes.</p> <p>14 Q. Since starting at The PAPD, have you</p> <p>15 been employed there continuously?</p> <p>16 A. Yes.</p> <p>17 Q. When you started was there a primary</p> <p>18 location you were stationed at?</p> <p>19 A. Yes.</p> <p>20 Q. And what was that?</p> <p>21 A. The Port Authority Bus Terminal.</p> <p>22 Q. Are you still stationed there?</p> <p>23 A. Yes.</p> <p>24 Q. Have you been stationed anywhere else</p> <p>25 in the interim?</p>	<p style="text-align: right;">Page 20</p> <p>1 Tone</p> <p>2 facility or do you -- in one patrol or do you</p> <p>3 divide it up?</p> <p>4 A. It would depend on what you were</p> <p>5 assigned for the day.</p> <p>6 Q. Okay.</p> <p>7 What are some of those assignments?</p> <p>8 A. Just post assignments, what your area</p> <p>9 of responsibility would be.</p> <p>10 Q. Would that be like the first floor, the</p> <p>11 second floor, or is it more narrow than that?</p> <p>12 A. It could be more narrow than that.</p> <p>13 Q. Could you give me some examples?</p> <p>14 A. Yeah. It would be different floors in</p> <p>15 either the north wing or the south wing. In some</p> <p>16 instances they would be shared.</p> <p>17 Q. Okay.</p> <p>18 Do you ever go as limited as, say, like</p> <p>19 the entrance or the bathroom?</p> <p>20 A. No.</p> <p>21 Q. So you said there was not any specific</p> <p>22 location you were primarily stationed at?</p> <p>23 A. The only exception would be a security</p> <p>24 booth.</p> <p>25 Q. A security booth?</p>
<p style="text-align: right;">Page 19</p> <p>1 Tone</p> <p>2 A. No.</p> <p>3 Q. So I'm going to ask you some questions</p> <p>4 now that refer to the relevant time period.</p> <p>5 That's generally January 1st, 2014, through August</p> <p>6 18th, 2017. So just realize that that's sort of</p> <p>7 the time scope we're going for these questions.</p> <p>8 MR. BROPHY: I'm sorry, can you repeat</p> <p>9 that?</p> <p>10 MR. McNEELY: I'm couching the next set</p> <p>11 of questions as being limited to the time</p> <p>12 period of January 1st, 2014, through August</p> <p>13 18th, 2017.</p> <p>14 Q. And I believe you said you were an</p> <p>15 officer that entire time already. That's correct?</p> <p>16 A. Yes.</p> <p>17 Q. During that time was there a particular</p> <p>18 patrol you regularly worked?</p> <p>19 A. No.</p> <p>20 Q. Where did you typically patrol or where</p> <p>21 all did you patrol?</p> <p>22 A. We would patrol the facility of the bus</p> <p>23 terminal.</p> <p>24 Q. Okay.</p> <p>25 And does that involve like the entire</p>	<p style="text-align: right;">Page 21</p> <p>1 Tone</p> <p>2 A. Yeah, if you were in a security booth,</p> <p>3 you would be in a fixed location.</p> <p>4 Q. Okay.</p> <p>5 Have you been stationed at the bus</p> <p>6 terminal for the entire time you've been with</p> <p>7 PAPD?</p> <p>8 A. Yes.</p> <p>9 Q. So you've never worked at, like, JFK or</p> <p>10 World Trade Center or any of those places?</p> <p>11 A. Yes, I have, yes.</p> <p>12 Q. Okay.</p> <p>13 How long? Just --</p> <p>14 A. Maybe a couple hours, you know, they</p> <p>15 send us to another command or...</p> <p>16 Q. Never like for a period of days or</p> <p>17 weeks?</p> <p>18 A. No.</p> <p>19 Q. I'm not sure I got the answer to this.</p> <p>20 So was there a location that you were primarily</p> <p>21 stationed at within The PABT?</p> <p>22 MR. BROPHY: Note my objection.</p> <p>23 You can answer.</p> <p>24 A. Within the confines of The Port</p> <p>25 Authority Bus Terminal.</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 94</p> <p>1 Tone</p> <p>2 MR. BROPHY: Objection.</p> <p>3 Go ahead.</p> <p>4 A. It would be, you know, the act of</p> <p>5 possibly an arm moving or two individuals looking</p> <p>6 at each other, acting in a strange manner, and</p> <p>7 then from there you would observe the act.</p> <p>8 Q. Okay.</p> <p>9 A. Yes.</p> <p>10 Q. So you would still need to observe it</p> <p>11 to make the arrest even --</p> <p>12 A. Yes.</p> <p>13 Q. -- if you have suspicion.</p> <p>14 And these urinals have partitions;</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you've said you have never looked</p> <p>18 over or around -- well, I said -- I think you said</p> <p>19 you didn't look over. Have you ever looked around</p> <p>20 a urinal partition?</p> <p>21 A. Define "around."</p> <p>22 Q. Lean back, look around, try to see</p> <p>23 what's going on next to you.</p> <p>24 MR. BROPHY: Note my objection.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">Page 96</p> <p>1 Tone</p> <p>2 assignments to patrol the restrooms increase or</p> <p>3 decrease after the relevant time period? Like</p> <p>4 2017 to present, have they increased or gone down?</p> <p>5 MR. BROPHY: Note my objection.</p> <p>6 You can answer.</p> <p>7 A. No.</p> <p>8 Q. No? They've stayed about the same?</p> <p>9 A. Yes.</p> <p>10 Q. Thinking back to like October 7th,</p> <p>11 2014, did your assignments to patrol the restrooms</p> <p>12 change after that date?</p> <p>13 A. On a specific date?</p> <p>14 Q. Or around October 2014.</p> <p>15 A. Not to my recollection.</p> <p>16 Q. What about, say, March of 2017?</p> <p>17 A. Not to my recollection, no.</p> <p>18 Q. Have the amount of public lewdness</p> <p>19 arrests that you've made in the restrooms</p> <p>20 increased or decreased after 2014?</p> <p>21 A. That I don't know.</p> <p>22 Q. Say after 2017?</p> <p>23 A. I don't have the stats. They're not</p> <p>24 given to us.</p> <p>25 Q. Do you need a break?</p>
<p style="text-align: right;">Page 95</p> <p>1 Tone</p> <p>2 A. No.</p> <p>3 Q. How close do you have to get to someone</p> <p>4 before you can tell if they're masturbating?</p> <p>5 MR. BROPHY: Objection.</p> <p>6 You can answer.</p> <p>7 A. Whatever distance allows you to see the</p> <p>8 act occurring.</p> <p>9 Q. Is that 5 feet?</p> <p>10 MR. BROPHY: Objection.</p> <p>11 Go ahead.</p> <p>12 A. I've never measured, never taken a</p> <p>13 measurement.</p> <p>14 Q. Can you tell from across the room or do</p> <p>15 you have to be pretty close?</p> <p>16 A. At times you can see it from across the</p> <p>17 room.</p> <p>18 Q. If they're standing far enough back?</p> <p>19 A. Yeah, in --</p> <p>20 Q. Or in the middle of the room?</p> <p>21 MR. BROPHY: Go ahead. I'm sorry.</p> <p>22 A. As I stated, sometimes they're in the</p> <p>23 middle of the bathroom.</p> <p>24 Q. Okay. So reminder that the relevant</p> <p>25 time period is whatever 2014 to 2017, did your</p>	<p style="text-align: right;">Page 97</p> <p>1 Tone</p> <p>2 A. We can take a break.</p> <p>3 MR. McNEELY: Let's take about a</p> <p>4 15-minute break. We'll go off the record.</p> <p>5 THE VIDEOGRAPHER: The time on the</p> <p>6 video monitor is 11:38 p.m. We're off the</p> <p>7 record. This ends Media 1.</p> <p>8 (Recess taken from 11:38 to 11:50.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record. The time on the video monitor is</p> <p>11 11:50 a.m. This starts Media 2.</p> <p>12 Q. All right.</p> <p>13 Mr. Tone, or Officer Tone, whichever</p> <p>14 you prefer, when patrolling The Port Authority Bus</p> <p>15 Terminal restrooms for public lewdness during the</p> <p>16 relevant time period, 2014 to 2017, you said you</p> <p>17 were in plainclothes.</p> <p>18 MR. BROPHY: Note my objection.</p> <p>19 You can answer.</p> <p>20 Q. At least at one point in time.</p> <p>21 MR. BROPHY: Note my objection.</p> <p>22 Go ahead.</p> <p>23 A. Yes.</p> <p>24 Q. Why did you do plainclothes patrol?</p> <p>25 MR. BROPHY: Objection.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 Tone</p> <p>2 You can answer.</p> <p>3 A. It was the post assigned to me at roll</p> <p>4 call.</p> <p>5 Q. Do you know why they assign</p> <p>6 plainclothes patrols, your supervisors?</p> <p>7 MR. BROPHY: Objection.</p> <p>8 Go ahead.</p> <p>9 A. No.</p> <p>10 Q. Is there any way when you're patrolling</p> <p>11 in plainclothes for individuals using the restroom</p> <p>12 to know you're an officer?</p> <p>13 MR. BROPHY: Note my objection.</p> <p>14 You can answer.</p> <p>15 A. No.</p> <p>16 Q. And did you wear plainclothes</p> <p>17 intentionally so no one would know you were an</p> <p>18 officer?</p> <p>19 MR. BROPHY: Objection.</p> <p>20 You can answer.</p> <p>21 A. It was the post that was assigned to</p> <p>22 me.</p> <p>23 Q. And you had no idea why they assigned</p> <p>24 that post?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 100</p> <p>1 Tone</p> <p>2 Q. Okay.</p> <p>3 Never been given any indication as to</p> <p>4 why you're assigned that?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 Why was it -- do you think -- do you</p> <p>8 know why it was necessary for you to conceal that</p> <p>9 you're an officer?</p> <p>10 MR. BROPHY: Note my objection.</p> <p>11 You can answer.</p> <p>12 A. Because some crimes don't happen when</p> <p>13 you're walking around in uniform.</p> <p>14 Q. Okay. And which are those?</p> <p>15 A. Could be any number of things. It</p> <p>16 could be drug sales, thefts, robberies.</p> <p>17 Q. Is public lewdness one of those crimes?</p> <p>18 A. Public lewdness is a crime, yes.</p> <p>19 Q. No, is that one of the crimes that</p> <p>20 don't happen when officers are in uniform?</p> <p>21 MR. BROPHY: Objection.</p> <p>22 You can answer.</p> <p>23 A. It does happen in uniform as well.</p> <p>24 Q. Okay. So I think you said some crimes</p> <p>25 don't happen when you're walking around in</p>
<p style="text-align: right;">Page 99</p> <p>1 Tone</p> <p>2 Q. No one's ever communicated the purpose</p> <p>3 of a plainclothes post?</p> <p>4 A. It's picked at roll call by the</p> <p>5 supervisors, and we're instructed what to do.</p> <p>6 Q. Do you have any suspicions as to why</p> <p>7 they assign you to patrol in plainclothes?</p> <p>8 MR. BROPHY: Note my objection.</p> <p>9 You can answer.</p> <p>10 A. Suspensions? No.</p> <p>11 Q. Like do you have any beliefs as to why</p> <p>12 you're assigned to patrol in plainclothes?</p> <p>13 A. No.</p> <p>14 Q. So you just think it's like casual</p> <p>15 jeans Friday or something?</p> <p>16 MR. BROPHY: Objection.</p> <p>17 You can answer.</p> <p>18 A. I don't know what you mean by "casual</p> <p>19 jeans Friday."</p> <p>20 Q. I mean, is it just for the officers'</p> <p>21 enjoyment that you can dress in plainclothes?</p> <p>22 MR. BROPHY: Objection.</p> <p>23 Go ahead.</p> <p>24 A. That question I can't answer because,</p> <p>25 as I stated, it's the post that we're assigned.</p>	<p style="text-align: right;">Page 101</p> <p>1 Tone</p> <p>2 uniform. So if the goal at The Port Authority is</p> <p>3 to prevent and deter crime, shouldn't you always</p> <p>4 be in uniform?</p> <p>5 MR. BROPHY: Note my objection.</p> <p>6 You can answer.</p> <p>7 A. That's not my decision.</p> <p>8 Q. Okay.</p> <p>9 Who assigns you to patrol in</p> <p>10 plainclothes?</p> <p>11 A. As I stated before, it would either be</p> <p>12 the tour commander or the sergeant.</p> <p>13 Q. Okay. So is that assigned at roll call</p> <p>14 or do you get a heads-up before you show up to</p> <p>15 work?</p> <p>16 A. Usually it would be at roll call. You</p> <p>17 would have to go back downstairs, change out of</p> <p>18 uniform.</p> <p>19 Q. So it would be just whatever clothes</p> <p>20 you wear to work that day, or do you keep like a</p> <p>21 plainclothes outfit at work in case you get that</p> <p>22 assignment?</p> <p>23 A. I would just wear what I wore into work</p> <p>24 that day.</p> <p>25 Q. Is there ever a situation where you</p>

<p style="text-align: right;">Page 114</p> <p>1 Tone</p> <p>2 A. I meant the third level.</p> <p>3 Q. Okay. So is there one level that's</p> <p>4 below ground that's like a basement?</p> <p>5 A. It's -- that's a tough question to</p> <p>6 answer so -- it's -- one side of it is; one side</p> <p>7 isn't.</p> <p>8 Q. Yeah, that's kind of where I'm getting</p> <p>9 at, just trying to make sure we're talking about</p> <p>10 the same floor.</p> <p>11 So what was your assignment? Was it</p> <p>12 listed as third level or was it listed as like</p> <p>13 south third floor?</p> <p>14 A. My assignment was plainclothes.</p> <p>15 Q. Plainclothes. Okay. So plainclothes</p> <p>16 could be anywhere throughout the premises; or</p> <p>17 earlier you had said patrols might be north</p> <p>18 building, south building, second floor, north.</p> <p>19 I'm just trying to figure out where you were</p> <p>20 stationed that day.</p> <p>21 A. Plainclothes has the entire two</p> <p>22 buildings.</p> <p>23 Q. Okay.</p> <p>24 Can you describe the third level for me</p> <p>25 so we're a little clear as to which one we're</p>	<p style="text-align: right;">Page 116</p> <p>1 Tone</p> <p>2 long had you been an officer?</p> <p>3 A. Approximately six months.</p> <p>4 Q. And this was your first job as an</p> <p>5 officer?</p> <p>6 A. Yes.</p> <p>7 Q. Were you patrolling with anyone else</p> <p>8 that day?</p> <p>9 A. Yes.</p> <p>10 Q. Do you remember who?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And who was that?</p> <p>13 A. Officer Kehoe.</p> <p>14 Q. All right.</p> <p>15 And he's still employed at The PAPD;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And what were you patrolling for that</p> <p>19 day?</p> <p>20 A. We were patrolling for any infractions,</p> <p>21 any law violations.</p> <p>22 Q. No emphasis on quality-of-life issues?</p> <p>23 A. No.</p> <p>24 Q. And going back, why were you patrolling</p> <p>25 the men's room?</p>
<p style="text-align: right;">Page 115</p> <p>1 Tone</p> <p>2 talking about? Is it third level from the</p> <p>3 underground up or street level is level one and</p> <p>4 then it's two above that?</p> <p>5 MR. BROPHY: Note my objection.</p> <p>6 You can answer if you can.</p> <p>7 A. In which building?</p> <p>8 Q. South. I believe you were in the south</p> <p>9 building, you said.</p> <p>10 A. So south building?</p> <p>11 Q. Yeah.</p> <p>12 A. Okay. It was --</p> <p>13 Q. Whichever building you were in when the</p> <p>14 arrest occurred.</p> <p>15 A. There's a lower level you can enter</p> <p>16 from either Ninth Avenue or the subway. Then you</p> <p>17 would come up to the second level, which is where</p> <p>18 all the main ticketing facilities are.</p> <p>19 Q. Okay.</p> <p>20 A. Then the third level to the bus ramps.</p> <p>21 Q. Okay. So that's where we're talking</p> <p>22 about here, the third level at the bus ramps?</p> <p>23 A. Well, the entrance to the bus ramps.</p> <p>24 Q. Okay.</p> <p>25 And on -- as of July 9th, 2014, how</p>	<p style="text-align: right;">Page 117</p> <p>1 Tone</p> <p>2 A. We were patrolling all the buildings.</p> <p>3 Q. So why were you in the men's room that</p> <p>4 day?</p> <p>5 A. Because it's part of that -- it's part</p> <p>6 of the patrol area.</p> <p>7 Q. But you weren't looking for anything</p> <p>8 specific?</p> <p>9 A. No.</p> <p>10 Q. Not the homelessness issue you had</p> <p>11 discussed earlier?</p> <p>12 A. Nothing specific.</p> <p>13 Q. Okay.</p> <p>14 And do you recall what you did when you</p> <p>15 entered the restroom? You started to talk about</p> <p>16 looking under the stalls.</p> <p>17 A. I entered the bathroom. I was checking</p> <p>18 underneath the stalls to make sure nobody was</p> <p>19 sleeping on the floor, intoxication, anything like</p> <p>20 that.</p> <p>21 Q. And was Mr. -- or -- Mr. Kehoe with you</p> <p>22 or was he in the bathroom or was he outside?</p> <p>23 A. He was outside.</p> <p>24 Q. Okay.</p> <p>25 And why did you enter alone?</p>

<p style="text-align: right;">Page 138</p> <p>1 Tone</p> <p>2 on the other side.</p> <p>3 Q. So opposite the stalls.</p> <p>4 Do you know how many urinals there</p> <p>5 were?</p> <p>6 A. No, I do not.</p> <p>7 Q. Similar number of urinals to stalls or</p> <p>8 more?</p> <p>9 A. No, I don't know the answer. We could</p> <p>10 contact engineering.</p> <p>11 Q. So do the sinks take up about the same</p> <p>12 amount of room as the bathroom space or is it more</p> <p>13 bathrooms than sinks?</p> <p>14 MR. BROPHY: Note my objection.</p> <p>15 You can answer.</p> <p>16 A. Again, not being the engineer of the</p> <p>17 bathroom, I can only speculate that it was a</p> <p>18 little smaller.</p> <p>19 Q. So Mr. Mejia is at the urinal, he's</p> <p>20 turned to his right, I believe you said, towards</p> <p>21 this man next to him, and you've taken a few steps</p> <p>22 from the sinks towards the stalls, and you're a</p> <p>23 few feet away from Mr. Mejia. At this point you</p> <p>24 say you can see his penis and the other man, but</p> <p>25 you can't see the other man's penis.</p>	<p style="text-align: right;">Page 140</p> <p>1 Tone</p> <p>2 A. No, I do not.</p> <p>3 Q. I think you said you don't know which</p> <p>4 sink you were at, but do you recall which sink you</p> <p>5 were at before you stepped away towards Mr. Mejia?</p> <p>6 MR. BROPHY: Objection.</p> <p>7 Go ahead.</p> <p>8 A. It would be a guess at this point.</p> <p>9 Q. So you observed the crime, and you were</p> <p>10 then -- what happened next after you observed the</p> <p>11 crime?</p> <p>12 A. I exited the bathroom, spoke to my</p> <p>13 partner, told him I observed a crime, we waited</p> <p>14 for the individual to exit the bathroom.</p> <p>15 Q. Why didn't you immediately arrest him?</p> <p>16 A. Because to perform an arrest inside the</p> <p>17 restroom is not safe for the officers or anyone</p> <p>18 else involved.</p> <p>19 Q. Okay.</p> <p>20 So Mr. Mejia comes out of the bathroom.</p> <p>21 What did you say to him?</p> <p>22 A. We stated to him that he was under</p> <p>23 arrest.</p> <p>24 Q. Did he say anything to you?</p> <p>25 A. He just stated, What did I do?</p>
<p style="text-align: right;">Page 139</p> <p>1 Tone</p> <p>2 Was the other man urinating, do you</p> <p>3 know?</p> <p>4 A. No, I do not know.</p> <p>5 Q. And you're a few feet away from</p> <p>6 Mr. Mejia. Is this the point where you arrested</p> <p>7 him?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 So what happened next?</p> <p>11 A. After the crime was observed, I exited</p> <p>12 the bathroom.</p> <p>13 Q. Okay.</p> <p>14 A. Communicated to my partner that I</p> <p>15 witnessed a crime.</p> <p>16 Q. And which crime are we talking about</p> <p>17 here?</p> <p>18 A. Public lewdness.</p> <p>19 Q. What specific act?</p> <p>20 A. Masturbating in public.</p> <p>21 Q. Was he also charged with exposure?</p> <p>22 A. I don't have the paperwork in front of</p> <p>23 me.</p> <p>24 Q. Do you know if the other person saw his</p> <p>25 penis?</p>	<p style="text-align: right;">Page 141</p> <p>1 Tone</p> <p>2 Q. Okay.</p> <p>3 And did you show him your badge?</p> <p>4 A. Yes, I did.</p> <p>5 Q. And did you handcuff him?</p> <p>6 A. Yes, he was handcuffed.</p> <p>7 Q. And so you told him he was under</p> <p>8 arrest. Did you tell him what for?</p> <p>9 A. It was explained to him that we would</p> <p>10 explain it to him when we got back to the police</p> <p>11 desk.</p> <p>12 Q. And where's the police desk?</p> <p>13 A. The police desk is located on the</p> <p>14 second level.</p> <p>15 Q. Okay.</p> <p>16 Was anyone besides Officer Kehoe with</p> <p>17 you?</p> <p>18 A. No.</p> <p>19 Q. Okay. And why was Officer Kehoe with</p> <p>20 you that day?</p> <p>21 A. Because we were working as partners.</p> <p>22 Q. Okay.</p> <p>23 Do you always work with a partner?</p> <p>24 A. No.</p> <p>25 Q. Was Officer Kehoe also in plainclothes?</p>

<p style="text-align: right;">Page 158</p> <p>1 Tone</p> <p>2 A. Yes.</p> <p>3 Q. And do your partners typically take</p> <p>4 shift notes?</p> <p>5 A. Yes.</p> <p>6 Q. And why do you take notes?</p> <p>7 A. To account for time throughout the day.</p> <p>8 Q. Do you need to report your time to</p> <p>9 someone or is it just for your own records?</p> <p>10 A. Both?</p> <p>11 Q. Can you just read some of these notes</p> <p>12 to me? So it says 7/8/14 at the top, Tuesday, bus</p> <p>13 terminal, tour post TPO. What does the third line</p> <p>14 say?</p> <p>15 A. It says radio and meal.</p> <p>16 Q. Okay.</p> <p>17 And then sergeant, tour commander, and</p> <p>18 then I believe it says 1445 roll call?</p> <p>19 A. Yes.</p> <p>20 Q. So that means 2:45 you did your roll</p> <p>21 call, your shift started at 3?</p> <p>22 A. Yes.</p> <p>23 Q. And that shift was the TPU?</p> <p>24 A. Yes.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 160</p> <p>1 Tone</p> <p>2 Mr. Mejia?</p> <p>3 A. No.</p> <p>4 Q. Does it say arrest anywhere on these</p> <p>5 notes?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Where is that at?</p> <p>8 A. For the following day.</p> <p>9 Q. Okay.</p> <p>10 So you took these notes for the</p> <p>11 previous days?</p> <p>12 MR. BROPHY: Objection.</p> <p>13 A. These notes are for two days.</p> <p>14 Q. Oh, for two days. Oh, okay. Oh, 7/9</p> <p>15 here at the bottom. Gotcha. Sorry.</p> <p>16 At what line are Mr. Mejia's arrest on</p> <p>17 this?</p> <p>18 A. Mr. Mejia's arrest would be on the line</p> <p>19 for 1630.</p> <p>20 Q. Okay. And can you read that line to</p> <p>21 me?</p> <p>22 A. 40 with a 16 to process arrest.</p> <p>23 Q. I'm going to switch to Exhibit 3</p> <p>24 because it's a more legible copy. So you see here</p> <p>25 on the first page it says on page 2385 Miguel</p>
<p style="text-align: right;">Page 159</p> <p>1 Tone</p> <p>2 So then what does 1610, what does that</p> <p>3 mean?</p> <p>4 A. That line means returning to the</p> <p>5 quarters with two arrests.</p> <p>6 Q. Okay. And what were those arrests, do</p> <p>7 you know?</p> <p>8 A. No, I do not.</p> <p>9 Q. Then at I believe it says 2000 MTS for</p> <p>10 PETS something. What does that say?</p> <p>11 A. That stands for midtown south precinct</p> <p>12 for the NYPD. PETS is the system they use for</p> <p>13 vouchering narcotics, among other things.</p> <p>14 Q. Okay.</p> <p>15 It says for PETS voucher?</p> <p>16 A. Yes.</p> <p>17 Q. Does that mean at that time you</p> <p>18 arrested someone for narcotics?</p> <p>19 A. That just means something needed to go</p> <p>20 down and be vouchered.</p> <p>21 Q. Okay. Then at 2100.</p> <p>22 A. Return to quarters for paperwork.</p> <p>23 Q. Okay. And 2300?</p> <p>24 A. EOD, end of duty.</p> <p>25 Q. So was one of those two arrests</p>	<p style="text-align: right;">Page 161</p> <p>1 Tone</p> <p>2 Mejia at the top and it says here he was arrested</p> <p>3 for public lewdness and exposure of a person; is</p> <p>4 that correct?</p> <p>5 A. Listed on this piece of paper are the</p> <p>6 two penal charges that he was charged with.</p> <p>7 Q. And on the next page it spells them</p> <p>8 out, what those numbers mean, on 2386?</p> <p>9 A. Yes.</p> <p>10 Q. Now, on page 2387 in Box 83, there's</p> <p>11 additional details description. Did you write</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. And how did you know what to write in</p> <p>15 this box?</p> <p>16 A. The narrative, you're talking about?</p> <p>17 Q. Yes.</p> <p>18 A. It was explained to us that there was a</p> <p>19 specific narrative that the ADAs like to have on</p> <p>20 their paperwork.</p> <p>21 Q. So how?</p> <p>22 A. Specific wording.</p> <p>23 Q. Okay.</p> <p>24 And what is that wording?</p> <p>25 A. I don't know the exact wording.</p>

<p style="text-align: right;">Page 170</p> <p>1 Tone</p> <p>2 MR. McNEELY: We'll call this Exhibit</p> <p>3 4.</p> <p>4 (Tone Exhibit 4, transcript of trial</p> <p>5 testimony dated 11/17/14, marked for</p> <p>6 identification.)</p> <p>7 Q. And this is a transcript of your prior</p> <p>8 trial testimony.</p> <p>9 Do you recall making statements under</p> <p>10 oath at your trial?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall on that day testifying</p> <p>13 that you were patrolling with Officer Kehoe?</p> <p>14 A. Yes.</p> <p>15 Q. So why was that detail omitted from</p> <p>16 your report that was in Exhibit 3?</p> <p>17 A. It was not put in because it wasn't</p> <p>18 relevant at that time.</p> <p>19 Q. How was it not relevant?</p> <p>20 A. I was the individual that placed him</p> <p>21 under arrest.</p> <p>22 Q. Okay.</p> <p>23 Do you recall testifying at this trial</p> <p>24 that Mr. Mejia exposed his penis to another</p> <p>25 restroom patron and masturbated towards him?</p>	<p style="text-align: right;">Page 172</p> <p>1 Tone</p> <p>2 MR. McNEELY: Oh, no, it's only the</p> <p>3 first day that he testified.</p> <p>4 MR. BROPHY: Right.</p> <p>5 MR. McNEELY: Officer Kehoe's testimony</p> <p>6 is not there.</p> <p>7 MR. BROPHY: For the record, just so</p> <p>8 that it's clear it's only for November 17th,</p> <p>9 2014. And it appears to be only Officer</p> <p>10 Tone's testimony; is that correct?</p> <p>11 MR. McNEELY: No, the front part should</p> <p>12 have other testimony.</p> <p>13 MR. BROPHY: Okay. It looks like there</p> <p>14 are proceedings and then an opening and then</p> <p>15 Officer Tone's testimony; is that correct?</p> <p>16 MR. McNEELY: I believe that's correct.</p> <p>17 It's the full first-day transcript.</p> <p>18 MR. BROPHY: Thank you.</p> <p>19 (Tone Exhibit 5, arrest record 14B306,</p> <p>20 Bates-stamped beginning 2177, marked for</p> <p>21 identification.)</p> <p>22 Q. So we're in Exhibit 5 -- so this is</p> <p>23 Exhibit 5. It's arrest record number 14B306</p> <p>24 starting on 2177. And if you turn to page 2178, I</p> <p>25 believe you'll see your name under "arresting</p>
<p style="text-align: right;">Page 171</p> <p>1 Tone</p> <p>2 A. Yes.</p> <p>3 Q. So why did you omit that from the</p> <p>4 report?</p> <p>5 A. I think that I omitted details from the</p> <p>6 report because I was a new officer, I was</p> <p>7 inexperienced. Having the chance to do it now, I</p> <p>8 would do it differently.</p> <p>9 Q. So you weren't trained in terms of how</p> <p>10 to fill out paperwork for lewdness prior to this</p> <p>11 incident?</p> <p>12 MR. BROPHY: Note my objection.</p> <p>13 You can answer.</p> <p>14 A. No, I was not trained.</p> <p>15 Q. Are there any other pertinent details</p> <p>16 you recall from Mr. Miguel Mejia's arrest that are</p> <p>17 omitted either intentionally or unintentionally</p> <p>18 from the paperwork?</p> <p>19 MR. BROPHY: Note my objection.</p> <p>20 A. No.</p> <p>21 Q. I'm going to hand you Exhibit 5.</p> <p>22 MR. BROPHY: Counsel, for the record,</p> <p>23 this is a transcript dated November 17th,</p> <p>24 2014. I believe the trial went on the next</p> <p>25 day. This is only for that day.</p>	<p style="text-align: right;">Page 173</p> <p>1 Tone</p> <p>2 officer"; is that correct?</p> <p>3 A. Yes, that is correct.</p> <p>4 Q. At the bottom next to your signature?</p> <p>5 A. Yes.</p> <p>6 Q. And then can you tell me who the tour</p> <p>7 commander is there at the bottom?</p> <p>8 A. No, I cannot.</p> <p>9 Q. And then at the top in Box 13, you will</p> <p>10 see the time of the occurrence. I believe it says</p> <p>11 1610 to 1615.</p> <p>12 A. Yes.</p> <p>13 Q. So 4:10 to 4:15.</p> <p>14 So what does that signify? Is</p> <p>15 when you observed or when you entered the bathroom</p> <p>16 or -- and what happened at 4:15? Is that when the</p> <p>17 arrest was made or when they were taken to</p> <p>18 precinct, or is that how long you observed the</p> <p>19 conduct? I'm just curious for my own benefit.</p> <p>20 A. Well, without reviewing the document,</p> <p>21 that time could be from the initial observation.</p> <p>22 Q. To what?</p> <p>23 A. To when it was ended.</p> <p>24 Q. Okay.</p> <p>25 The observation was ended or the arrest</p>